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that for which the noble Army of Martyrs were content to die. We allude to Mr. Choate's most interesting and instructive address at the Quarter Century celebration of the settlement of his pastor, Rev. Dr. Adams, in the Essex Street Church, and to the affecting baptism of his dying child, by Rev. Dr. Winslow. The latter occasion presents a scene of the most affecting beauty and pathos, the description of which it is impossible to read without feeling how tenderly the Christian father watched over the spiritual welfare of his children to the last moments of their earthly life, and at the same time how childlike and sincere must be the faith of such a father, who, at such a time, did not dare trust his child, without the seal of that sacrament which the Church of all ages commands us not wilfully to neglect, even upon the peril of our soul's salvation.

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#### RECENT AMERICAN DECISIONS.

*In the Supreme Court of the United States.*

Nos. 134, 163, 170, 261, 262, 263.

CLAIMANTS OF SCHOONERS BRILLIANT, CRENSHAW, BARK HIAWATHA,  
BRIG AMY WARWICK, APPELLANTS, vs. UNITED STATES.

#### *Prize Cases.*

Neutrals have a right to challenge the existence of a blockade *de facto*, and also the authority of the party instituting it. They have a right to enter the ports of a friendly nation for the purposes of commerce, but are bound to recognise the right of a belligerent engaged in actual war, to use this mode of coercion for subduing the enemy.

To legitimate the capture of a neutral vessel or property on the high seas, a war must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the belligerents to use this mode of coercion against a port, city, or territory in possession of the other.

War is that state in which a nation prosecutes its right by force; and it is not necessary that both parties should be acknowledged as independent nations or sovereign states, nor that war should be solemnly declared.

As a civil war is never publicly proclaimed, *eo nomine*, against insurgents, its

actual existence is a fact in domestic history which the Courts are bound to notice and know.

Where the sovereign of a neutral state has acknowledged the existence of a war by his proclamation of neutrality, a citizen of that state is estopped from denying the existence of the war, and the belligerent right of blockade.

The President is vested with the whole executive power of the United States; and whether in suppressing an insurrection he has met such armed resistance, and a civil war of such proportions as compels him to accord them the character of belligerents, is a question to be decided *by him*, and the Courts must be governed by his decision.

The President therefore had a right *jure belli* to institute a blockade of ports in possession of the States in rebellion, which neutrals are bound to regard.

Under the constitution of this government, although the citizens owe supreme allegiance to the Federal Government they owe also a qualified allegiance to the state in which they are domiciled; their persons and property are subject to its laws.

Hence in organizing this rebellion they have *acted as States* claiming to be sovereign over all persons and property within their respective limits, and asserting a right to absolve their citizens from their allegiance to the Federal Government. The ports and territory of these States are held in hostility to the General Government, and all persons residing in this territory whose property may be used to increase the revenues of the hostile power, are in this contest liable to be treated as enemies.

Whether property be liable to capture as "enemies' property" does not in any manner depend on the personal allegiance of the owner. It is the illegal traffic that stamps it as "enemies' property."

These causes came up by appeal from decrees *in prize*, of the Circuit Courts for the Southern District of New York, and the District of Massachusetts, affirming respectively the sentences of condemnation passed upon the vessels and cargoes by the District Courts for said districts. The following opinion is confined to the general questions of law which were raised by *all* the cases. It does not discuss the *special facts* and circumstances of the respective cases.

March 9th, 1863.—Opinion of the Court by

GRIER, J.—There are certain propositions of law which must necessarily affect the ultimate decision of these cases and many others, which it will be proper to discuss and decide before we notice the special facts peculiar to each. They are,

1st. Had the President a right to institute a blockade of ports

in possession of persons in armed rebellion against the government, on the principles of international law, as known and acknowledged among civilized states?

2d. Was the property of persons domiciled or residing within those states, a proper subject of capture on the sea as "*enemies' property*?"

I. Neutrals have a right to challenge the existence of a blockade, *de facto*, and also the authority of the party exercising the right to institute it. They have a right to enter the ports of a friendly nation for the purposes of trade and commerce, but are bound to recognise the rights of a belligerent engaged in actual war, to use this mode of coercion, for the purpose of subduing the enemy.

That a blockade *de facto* actually existed and was formally declared and notified by the President on the 27th and 30th of April 1861, is an admitted fact in these cases. That the President, as the executive chief of the government and commander-in-chief of the army and navy, was the proper person to make such notification, has not been, and cannot be disputed.

The right of prize and capture has its origin in the *jus belli*, and is governed and adjudged under the law of nations. To legitimate the capture of a neutral vessel, or property on the high seas, a war must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the parties belligerent to use this mode of coercion against a port, city, or territory in possession of the other.

Let us inquire whether, at the time this blockade was instituted, a state of *war* existed which would justify a resort to these means of subduing the hostile force.

War has been well defined to be "*that state in which a nation prosecutes its right by force.*" The parties belligerent in a public war are independent nations. But it is not necessary to constitute war, that both parties should be acknowledged as independent nations or sovereign states. A war may exist where one of the belligerents claims sovereign rights as against the other.

Insurrection against a government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the government. A civil war

is never solemnly declared ; it becomes such by its accidents—the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupies and holds in a hostile manner a certain portion of territory, have declared their independence, have cast off their allegiance, have organized armies, have commenced hostilities against their former sovereign, the world acknowledges them as belligerents, and the contest a *war*. *They* claim to be in arms to establish their liberty and independence, in order to become a sovereign state, while the sovereign party treats them as insurgents and rebels who owe allegiance, and who should be punished with death for their treason.

The laws of war, as established among nations, have their foundation in reason, and all tend to mitigate the cruelties and misery produced by the scourge of war. Hence the parties to a civil war usually concede to each other belligerent rights. They exchange prisoners, and adopt the other courtesies and rules common to public or national wars.

“A civil war,” says Vattel, “breaks the bands of society and government, or at least suspends their force and effect ; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as constituting, at least for a time, two separate bodies, two distinct societies. Having no common superior to judge between them, they stand in precisely the same predicament as two nations who engage in a contest and have recourse to arms. This being the case, it is very evident that the common laws of war—those maxims of humanity, moderation, and honor—ought to be observed by both parties in every civil war. Should the sovereign conceive that he has a right to hang up his prisoners as rebels, the opposite party will make reprisals, &c., &c. ; the war will become cruel, horrible, and every day more destructive to the nation.”

As a civil war is never publicly proclaimed, *eo nomine*, against insurgents, its actual existence is a fact in our domestic history, which the Court is bound to notice and to know.

The true test of its existence, as found in the writings of the  
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sages of the common law, may be thus summarily stated: "When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the Courts of justice cannot be kept open, CIVIL WAR EXISTS, and hostilities may be prosecuted on the same footing as if those opposing the Government were foreign enemies invading the land." By the Constitution, Congress alone has the power to declare a national or foreign war. It cannot declare war against a State, or any number of States, by virtue of any clause in the Constitution. The Constitution confers on the President the whole executive power. He is bound to take care that the laws be faithfully executed. He is Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States. He has no power to initiate or declare a war, either against a foreign nation or a domestic State. But by the Acts of Congress of February 28th, 1795, and 3d of March, 1807, he is authorized to call out the militia, and use the military and naval forces of the United States in case of invasion by foreign nations, and to suppress insurrection against the government of a State, or of the United States.

If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less *a war*, although the declaration of it be "*unilateral*." Lord STOWELL (1 Dodson 247) observes: "It is not the less a war on *that account*, for war may exist without a declaration on either side. It is so laid down by the best writers on the law of nations. A declaration of war by one country only, is not a mere challenge, to be accepted or refused at pleasure by the other."

This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies, or local unorganized insurrections. However long may have been its previous conception, it nevertheless sprung forth suddenly from the parent brain

a Minerva in the full panoply of war. The President was bound to meet it in the shape it presented itself, without waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact.

It is not the less a civil war, with belligerent parties in hostile array, because it may be called an "insurrection" by one side, and the insurgents be considered as rebels or traitors. It is not necessary that the independence of the revolted Province or State be acknowledged, in order to constitute it a party belligerent in a war, according to the law of nations. Foreign nations acknowledge it as war by a declaration of neutrality. The condition of neutrality cannot exist unless there be two belligerent parties. In the case of *Santissima Trinidad*, 7 Wheaton 337, this Court says: "The Government of the United States has recognised the existence of a civil war between Spain and her colonies, and has avowed her determination to remain neutral between the parties. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the sovereign rights of war." See also 3 Binn. 252.

As soon as the news of the attack on Fort Sumter, and the organization of a government by the seceding States, assuming to act as belligerents, could become known in Europe, to wit, on the 13th of May, 1861, the Queen of England issued her proclamation of neutrality, "recognising hostilities as existing between the Government of the United States of America and *certain States* styling themselves the Confederate States of America." This was immediately followed by similar declarations, or silent acquiescence by other nations.

After such an official recognition by the sovereign, a citizen of a foreign state is estopped to deny the existence of a war with all its consequences as regards neutrals. They cannot ask a Court to affect a technical ignorance of the existence of a war, which all the world acknowledges to be the greatest civil war known in the history of the human race, and thus cripple the arm of the Government and paralyse its powers by subtle definitions and ingenious sophisms.

The law of nations is also called the law of nature; it is founded

on the common consent as well as the common sense of the world. It contains no such anomalous doctrine as that which this Court are now for the first time desired to pronounce, to wit :

That insurgents who have risen in rebellion against their sovereign, expelled her Courts, established a revolutionary government, organized armies, and commenced hostilities, are not *enemies* because they are *traitors* ; and a war levied on the Government by traitors, in order to dismember and destroy it, is not *a war*, because it is an “insurrection.”

Whether the President, in fulfilling his duties as commander-in-chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions, as will compel him to accord to them the character of belligerents, is a question to be decided *by him*, and this Court must be governed by the decisions and acts of the political department of the government to which this power was intrusted. “He must determine what degree of force the crisis demands.” The proclamation of blockade is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure, under the circumstances, peculiar to the case. The correspondence of Lord Lyons with the Secretary of State, admits the fact and concludes the question.

If it were necessary to the technical existence of a war, that it should have a legislative sanction, we find it in almost every act passed at the extraordinary session of the Legislature of 1861, which was wholly employed in passing laws to enable the Government to prosecute the war with vigor and efficiency. And finally in 1861, we find Congress “*ex majore cautela*,” passing an act approving, legalizing, and making valid all the acts, proclamations, and orders of the President, &c., “as if they had been *issued and done under the previous express authority* and direction of the Congress of the United States.”

Without admitting that such an act was necessary under the circumstances, it is plain that if the President had in any manner assumed powers which it was necessary should have the authority or sanction of Congress, that on the well-known principle of law

"*Omnis ratihabitio, retrotrahitur et mandato equiparatur,*" this ratification has operated to perfectly cure the defect.

In the case of *Brown v. United States*, 8 Cranch 131, 132, 133, Mr. Justice STORY treats of this subject, and cites numerous authorities, to which we may refer, to prove this position, and concludes, "I am perfectly satisfied that no subject can commence hostilities or capture property of an enemy, when the sovereign has prohibited it. But suppose he did? I would ask if the sovereign may not ratify his proceedings; and then, by a retroactive operation, give validity to them?"

Although Mr. Justice STORY dissented from the majority of the Court, on the whole case, the doctrine stated by him on this point is correct, and fully substantiated by authority.

The objection made to this act of ratification, that it is *ex post facto*, and therefore unconstitutional and void, might possibly have some weight on the trial of an indictment in a criminal Court. But precedents from that source cannot be received as authoritative in a tribunal administering public and international law.

On this first question, therefore, we are of opinion that the President had a right *jure belli*, to institute a blockade of ports in possession of the States in rebellion, which neutrals are bound to regard.

II. We come now to the consideration of the second question. What is included in the term "*enemies' property*?"

Is the property of all persons residing within the territory of the States now in rebellion, captured on the high seas, to be treated as "*enemies' property*," whether the owner be in arms against the Government or not?

The right of one belligerent not only to coerce the other by direct force, but also to cripple his resources by the seizure or destruction of his property, is a necessary result of a state of war.

Money and wealth, the products of agriculture and commerce, are said to be the sinews of war, and as necessary in its conduct as numbers and physical force. Hence it is, that the laws of war recognise the right of a belligerent to cut these sinews of the power of the enemy, by capturing his property on the high seas.

The appellants contend that the term "*enemies*" is properly

applicable to those only who are subjects or citizens of a foreign state at war with our own. They quote from the pages of the Common Law, which say, "That persons who wage war against the king may be of two kinds, subjects or citizens. The former are not proper enemies, but rebels and traitors; the latter are those that come properly under the name of enemies."

They insist, moreover, that the President himself, in his proclamation, admits that great numbers of the persons residing within the territories in possession of the insurgent government, are loyal in their feelings, and forced by compulsion and the violence of the rebellious and revolutionary party, and its "de facto government," to submit to their laws and assist in their scheme of revolution; that the acts of the usurping government cannot legally sever the bond of their allegiance: they have, therefore, a correlative right to claim the protection of the Government for their persons and property, and to be treated as loyal citizens, till legally convicted of having renounced their allegiance and made *war* against the government by treasonably resisting its laws.

They contend also, that insurrection is the act of individuals and not of a government or sovereignty; that the individuals engaged are subjects of law; that confiscation of their property can be effected only under municipal law; that by the law of the land such confiscation cannot take place without the conviction of the owner of some offence; and finally, that the secession ordinances are nullities and ineffectual to release any citizen from his allegiance to the national government; consequently, the Constitution and laws of the United States are still operative over persons in all the States for punishment as well as protection.

This argument rests on the assumption of two propositions, each of which is without foundation on the established law of nations.

It assumes that where a civil war exists, the party belligerent claiming to be sovereign, cannot, for some unknown reason, exercise the rights of belligerents, although the revolutionary party may. Being sovereign, he can exercise only sovereign rights over the other party. The insurgent may be killed on the battle-field, or by the executioner, his property on land may be confiscated under the municipal law; but the commerce on the ocean, which supplies the

rebels with means to support the war, cannot be made the subject of capture under the laws of war, because it is "*unconstitutional*"!!! Now it is a proposition never doubted, that the belligerent party who claims to be sovereign, may exercise both belligerent and sovereign rights. See 4 Cranch 272. Treating the other party as a belligerent, and using only the milder modes of coercion which the law of nations has introduced to mitigate the rigors of war, cannot be a subject of complaint by the party to whom it is accorded as a grace or granted as a necessity.

We have shown that a civil war, such as that now waged between the Northern and Southern States, is properly conducted, according to the humane regulations of public law, as regards capture on the ocean.

Under the very peculiar Constitution of this Government, although the citizens owe supreme allegiance to the Federal Government, they owe also a qualified allegiance to the State in which they are domiciled; their persons and property are subject to its laws.

Hence, in organizing this rebellion, they have *acted as States* claiming to be sovereign over all persons and property within their respective limits, and asserting a right to absolve their citizens from their allegiance to the Federal Government. Several of these States have combined to form a new Confederacy, claiming to be acknowledged by the world as a sovereign State. Their right to do so is now being decided by wager of battle. The ports and territory of each of these States are held in hostility to the General Government. It is no loose, unorganized insurrection, having no defined boundary or possession. It has a boundary, marked by lines of bayonets, and which can be crossed only by force. South of this line is enemy's territory, because it is claimed and held in possession by an organized, hostile, and belligerent power.

All persons residing within this territory, whose property may be used to increase the revenues of the hostile power, are in this contest liable to be treated as enemies, though not foreigners. They have cast off their allegiance and made war on their government, and are none the less enemies because they are traitors.

But in defining the meaning of the term "enemies' property," we will be led into error if we refer to Fleta and Lord Coke for

their definition of the word "enemy." It is a technical phrase peculiar to Prize Courts, and depends upon principles of public as distinguished from the Common Law.

Whether property be liable to capture as "enemies' property," does not in any manner depend on the personal allegiance of the owner. "It is the illegal traffic that stamps it as 'enemies' property." It is of no consequence whether it belongs to an ally or a citizen." 8 Cranch 384. "The owner *pro hac vice* is an enemy." 3 Wash. C. C. R. 183.

The produce of the soil of the hostile territory, as well as other property engaged in the commerce of the hostile power, as the source of its wealth and strength, are always regarded as legitimate prize, without regard to the domicile of the owner, and much more so if he reside and trade within its territory. See Upton, chap. 3d, et cas. cit.

III. We now proceed to notice the facts peculiar to the several cases submitted for our consideration.<sup>1</sup>

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*Supreme Court of Illinois.*

ANTHONY S. SEELY vs. THE PEOPLE, for the use of ALFRED W. NEECE.

Where a party executes a bond as surety with another, whose name appears to the bond, but which name has been forged, he will not be liable.

This was an agreed case, showing that suit was instituted upon the office bond of Lewis W. Leick, master in chancery of Greene county, against Anthony S. Seely, one of the securities thereon, in the name of the People, who sue for the use of Alfred W. Neece, guardian of Jesse H. Neece and Pemnah Jane Neece. Said bond is payable to the People of the State of Illinois, and conditioned for the faithful discharge of the duties of the office of master in chancery.

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<sup>1</sup> The rest of the opinion, relating to facts peculiar to the cases under consideration, is omitted, as not being of general interest.—Editors AM. LAW REG.